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EXAMINER

KOSLOW, CAROL M

ART UNIT PAPER NUMBER

1755

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



Art Unit: 1755

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 30 November 2005 has been entered.

The amendments to the claim 71 have overcome the 35 USC 112, second paragraph rejection. Upon further reconsideration of the teachings on pages 9 and 11 of the specification and in view of the amendment to claim 71, the 35 USC 112, first paragraph rejection is withdrawn over claim 71. Applicant's arguments with respect to the remaining rejections have been fully considered but they are not persuasive.

It is noted that all the cited references in the IDS of 30 November 2005 are non-analogous and not material to the patentability of the claimed composition.

Claims 67-70 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a composition consisting essentially of  $\text{Si}_3\text{N}_{4/3}$  and  $(\text{CH}_3)_x\text{Si}_3\text{N}_{1-x}$ , where  $0 < x \leq 4$  or consisting essentially of  $(\text{CH}_3)_x\text{Si}_3\text{N}_{1-x}$ , where  $0 < x \leq 4$ , does not reasonably provide enablement for a composition comprising  $(\text{CH}_3)_x\text{Si}_3\text{N}_{4-x}$ , where  $0 < x \leq 4$  or a composition comprising  $(\text{CH}_3)_x\text{Si}_3\text{N}_{4-x}$ , where  $0 < x \leq 4$ , and  $\text{Si}_3\text{N}_{4/3}$ . The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims.

Page 8, lines 11-18 teaches a composition consisting essentially of  $(\text{CH}_3)_x\text{Si}_3\text{N}_{4-x}$ , where  $0 < x \leq 4$ . Page 9, lines 15-23 teaches a composition consisting essentially of  $\text{Si}_3\text{N}_{4/3}$  and  $(\text{CH}_3)_{4/3}\text{Si}_3\text{N}_{8/3}$  results from the process in lines 3-11 on page 9. Page 11, lines 7-16 teaches a

Art Unit: 1755

composition consisting essentially of  $\text{Si}_3\text{N}_{4/3}$  and  $(\text{CH}_3)_x\text{Si}_3\text{N}_{1-x}$  results from the disclosed process. Such a limited disclosure does not support the breadth of the instant claims. Given the teachings in the rest of the specification teaches the product resulting from the disclosed generic process consisting essentially of  $\text{Si}_3\text{N}_{4/3}$  and  $(\text{CH}_3)_x\text{Si}_3\text{N}_{1-x}$  or composition consisting essentially of  $(\text{CH}_3)_x\text{Si}_3\text{N}_{1-x}$ , the composition of matter of claims 67-70 is not enabled by the specification. It is noted that nowhere in the specification is there a teaching of a composition of matter comprising  $\text{Si}_3\text{N}_{4/3}$  and  $(\text{CH}_3)_x\text{Si}_3\text{N}_{1-x}$ .

Applicants' arguments with respect to this rejection are not convincing since the specification clearly teaches the disclosed processes forms a composition consisting essentially of  $\text{Si}_3\text{N}_{4/3}$  and  $(\text{CH}_3)_x\text{Si}_3\text{N}_{1-x}$  or consists essentially of  $(\text{CH}_3)_x\text{Si}_3\text{N}_{4-x}$ , where  $0 < x \leq 4$ . The fact line 12 on page 9 states the material comprises comprising  $(\text{CH}_3)_x\text{Si}_3\text{N}_{4-x}$ , where  $0 < x \leq 4$ , which is the only place the specification teaches a composition of matter comprising  $(\text{CH}_3)_x\text{Si}_3\text{N}_{4-x}$ , where  $0 < x \leq 4$ , does not show that the claimed composition is enabled by the specification, especially since lines 15-23 state the product actually consists essentially of  $\text{Si}_3\text{N}_{4/3}$  and  $(\text{CH}_3)_{4/3}\text{Si}_3\text{N}_{8/3}$ . It is noted that the generic process in line 20 through page 9 line 2 is silent as to the final product produced by this reaction. One must look to the rest of the specification to see what is the final product and the rest of specification indicate it consists essentially of  $\text{Si}_3\text{N}_{4/3}$  and  $(\text{CH}_3)_x\text{Si}_3\text{N}_{1-x}$ , where  $0 < x \leq 4$ . Applicants have not presented any evidence or reason as to what one of ordinary skill in the would not expect the disclosed process to produce the claimed composition, and not a material consisting essentially of  $\text{Si}_3\text{N}_{4/3}$  and  $(\text{CH}_3)_x\text{Si}_3\text{N}_{1-x}$ , where  $0 < x \leq 4$ . The rejection is maintained.

Art Unit: 1755

To overcome this rejection it is suggested to change “comprising” in claim 67 to “consisting essentially of” and to rewrite claim 68 as an independent claim to a composition of matter consisting essentially of  $\text{Si}_3\text{N}_{4/3}$  and  $(\text{CH}_3)_x\text{Si}_3\text{N}_{1-x}$ , where  $0 < x \leq 4$ .

Claim 71 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The claimed composition is not taught or suggested by the cited art of record.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 1755


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa Koslow whose telephone number is (571) 272-1371. The examiner can normally be reached on Monday-Friday from 8:00 AM to 3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo, can be reached at (571) 272-1233.

The fax number for all official communications is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

cmk  
January 20, 2006

  
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Tech. Center 1700